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Order 98-4-27

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**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
on the 27th day of April, 1998

In the matter of the revocation of the interstate and foreign  
charter certificates under 49 U.S.C. 41102 issued to

**VISCOUNT AIR SERVICES, INC.**

for dormancy pursuant to the provisions of 14 CFR 204.7

**Docket 49796**

Application of

**VISCOUNT AIR SERVICES, INC.**

for extension of waiver of revocation for dormancy under 14  
CFR 204.7

**Docket OST 97-3048**

**ORDER DENYING EXTENSION OF WAIVER AND  
REVOKING CERTIFICATES**

**Summary**

By this order, we are denying the application of Viscount Air Services, Inc., for an extension of the waiver of the revocation-for-dormancy provisions of 14 CFR 204.7, granted by Order 97-11-23, served November 19, 1997, and revoking its interstate and foreign charter certificates.

## Background

Viscount holds certificates reissued by Order 95-4-17 on April 11, 1995, authorizing it to engage in interstate and foreign charter air transportation of persons, property, and mail.<sup>1</sup> In January 1996, Viscount filed a Chapter 11 petition in the U.S. Bankruptcy Court, and, on October 27, 1996, ceased conducting all air transportation operations.

On October 30, 1996, we notified the carrier that, in accordance with section 204.7 of the Department's rules (14 CFR 204.7), due to the cessation of its operations, its certificate authority was automatically suspended; that it could not resume operations until its fitness to do so had been redetermined; and that it had one year from the date of cessation to reinstitute operations (*i.e.*, by October 27, 1997) or its certificates would be revoked for dormancy. We also advised Viscount that, under section 204.7, if it planned to resume operations, it must file a notice of intent to do so, along with updated fitness information, at least 45 days before the end of the one-year dormancy period (*i.e.*, by September 12, 1997). Alternatively, Viscount could request a waiver of the revocation-for-dormancy provisions of section 204.7 by October 27, 1997. On July 30, 1997, we reminded the carrier of the date on which its certificates would be revoked, and the procedures to be followed if it should desire to resume operations.

On October 24, 1997, Viscount filed in Docket OST-97-3048 a request for a waiver from the revocation provisions of section 204.7, stating that all of its stock had been acquired from the bankruptcy estate on April 30, 1997, by Air Oklahoma, Inc., which intended to merge Viscount into Air Oklahoma and reinstitute operations as Air Oklahoma under Viscount's certificate authority. The applicant claimed, however, that the new owners had not realized until October that the carrier's certificate authority was due to be revoked at the end of that month, and that an additional six months was required (until April 30, 1998) to complete preparations for resuming operations. With its application, Viscount supplied evidence that it had sources of operating capital, aircraft leases, and ground facilities, had identified qualified managerial and operating personnel, and had conferred with the FAA regarding approvals needed to recommence operations.

After evaluating the applicant's evidence, and considering that no objections to Viscount's application had been received, the Department, by staff action, granted the carrier the requested six-month waiver from revocation by Order 97-11-23, served November 19, 1997.

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<sup>1</sup> Viscount's certificates were originally issued in the name Viscount Air Service, Inc., by Orders 92-9-1, served September 1, 1992 (interstate), and 92-11-17, served November 6, 1992 (foreign). They were reissued by Order 94-19-25, served October 20, 1994, on the occasion of the company's corporate reorganization, and again by Order 95-4-17, on April 11, 1995, when the carrier changed its name to Viscount Air Services, Inc.

## Application for Extension of Waiver

On April 16, 1998, Viscount filed an application for an extension of the waiver granted by Order 97-11-23. The applicant declares, that despite its statements in its application for the initial waiver on October 24, 1997, it has found that it will be unable to obtain the necessary financing and aircraft leases in order to resume operations by April 30, 1998. Viscount states that Air Oklahoma plans to continue its efforts to institute air transportation operations, which it expects to be ready to do by the end of 1998, but that Air Oklahoma has decided to apply for its own new air carrier authority for that operation. In the interim, Viscount states that it is searching for persons interested in acquiring its stock and assets, with the ultimate goal of requesting a transfer of its operating authority to a new owner. To allow sufficient time for a qualified buyer with sufficient financial resources to be identified, for the acquisition transaction to be tentatively concluded, and for the transfer application to be filed, Viscount requests the Department to grant an extension of the waiver of revocation for an additional four months, until August 31, 1998. Viscount proposes that if it has not identified a new buyer to the Department by June 15, and if all required fitness information has not been filed by July 1, Viscount will voluntarily surrender its DOT and FAA certificates.<sup>2</sup>

Viscount argues that a decision by the Department denying it time to find a party willing and able to acquire it

would render meaningless and useless the Department's previous finding of fitness for Viscount and would destroy the potential for reviving the Department certificates . . . [and prevent] the certificates and related material [from being] acquired and utilized by a low-fare, start-up air carrier, flying charter and/or scheduled operations, to enter the competitive arena of air transportation and thereby further enhance the Department's oft-stated objective of providing a level-field environment for new-entrant air carriers.<sup>3</sup>

## Decision

Viscount appears to believe that some value remains in its certificates of public convenience and necessity, and that our refusal to allow additional time for those certificates to be sold "would render meaningless and useless" our previous finding that Viscount was fit, willing, and able to

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<sup>2</sup> On April 20, the carrier filed Amendment 1 to its application requesting Department action on its application by April 23. Viscount states that emergency action by the Department, as provided for in Rule 410, is required because, given the time allowed under normal procedures for answers to be filed and a decision to be issued, a large portion of the time schedule Viscount proposed to be allowed to identify a buyer and file a transfer application (*i.e.*, from April 30 to July 1) would have elapsed, and "a significant opportunity to realize the value of the Viscount stock and certificates may have been lost needlessly" (Amendment 1, p. 3). Viscount states that it is now focusing on one potential buyer, but that negotiations will cease if the Department has not granted the requested waiver extension by April 23. In light of our action here, Viscount's request for expedited consideration is moot.

<sup>3</sup> Application, p. 2.

operate under such certificates, and would “destroy the potential for reviving the Department certificates.”

Viscount has not conducted any air transportation operations for 18 months. It has no remaining assets of any value that have not already been distributed to creditors through bankruptcy procedures. It has no facilities, aircraft, personnel, or, we suspect, much in the way of goodwill. Its suspended section 41102 certificates are of no value to a potential buyer. Those certificates were issued originally to Viscount in 1992 as evidence that we had examined its management capability, financial condition, and compliance disposition and had found that company, in those specific circumstances, to be fit, willing, and able to conduct the interstate and foreign charter air transportation operations it proposed to conduct. That company no longer exists, and the finding we made about Viscount’s fitness ceased to be “meaningful” when Viscount stopped operations in October 1996 and would have no bearing on any new buyer who could not operate under Viscount’s certificate without having to undergo a complete fitness evaluation.

Viscount also argues that by revoking the certificates, the Department will bar a potential new air carrier and thereby thwart competition. We disagree. The revocation of these dormant certificates would not bar new entry, when any person may file an application for new air carrier authority at any time (as Viscount has stated Air Oklahoma plans to do when it is better prepared to institute operations). It is not as if there existed only a finite number of certificates to be awarded, in which case the limit on the number of certificates available would confer value to them.

Viscount also contends that it needs to preserve its economic authority in order to retain its FAA Air Carrier Certificate and Operations Specifications, as well as its FAA-approved operations and maintenance manuals. The applicant is incorrect. The FAA has stated that it has allowed Viscount’s FAA Air Carrier Certificate to remain active while there existed a possibility that the carrier would resume operations by April 30. However, as that date has approached without Viscount (or Air Oklahoma) having made an effort to come into compliance with section 119.65(a) of the Federal Aviation Regulations,<sup>4</sup> the FAA has now advised Viscount that if it does not surrender its FAA AirCarrier Certificate and Operations Specifications by April 30, the FAA will take steps to revoke that authority. The FAA has stated that this action would be independent of any decision by the Department to grant or deny Viscount an extension of the waiver of revocation of its economic authority. In addition, Viscount’s operations and maintenance manuals have little if any value since their contents in many regards are obsolete, certainly with respect to specific personnel and their qualifications, duties and responsibilities; the specific aircraft to be operated and their maintenance requirements; the contractors authorized and how their work is to be monitored; and innumerable other areas.

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<sup>4</sup> FAR section 119.65(a) requires all air carriers holding Part 121 certificates to have qualified personnel serving full-time in the following or equivalent positions: (1) Director of Safety, (2) Director of Operations, (3) Chief Pilot, (4) Director of Maintenance, (5) Chief Inspector.

As a final matter, while we have been willing to allow non-operating air carriers additional time beyond the one-year period provided in section 204.7 to become operational, we have generally done so under limited circumstances where the carrier was able to make a “good cause” showing that it was well along in its plans to recommence operations, or that there were other mitigating circumstances that justified such an extension. Indeed, as we previously noted, when Viscount first requested a waiver in October 1997, it provided evidence that Air Oklahoma was far advanced in its efforts to initiate operations, and we found this evidence to be sufficient grounds for granting the company additional time to complete its plans. In the circumstances before us now, Air Oklahoma has clearly indicated that neither it nor Viscount will be prepared or at all intends to operate under the dormant certificates, but rather it is seeking more time in order to sell its economic authority to an unidentified third party who would then have to undergo a complete fitness review before being authorized to operate under these certificates.

Based on the above considerations, we find that Viscount has not established good cause for a further waiver from the revocation-for-dormancy provisions of section 204.7. Therefore, we are denying its request for an extension and revoking its certificates for reasons of dormancy.

**ACCORDINGLY,**

1. We deny the application of Viscount Air Services, Inc., for an extension, until August 31, 1998, of the waiver from the revocation-for-dormancy provisions of 14 CFR 204.7, granted by Order 97-11-23 on November 19, 1997, and dismiss its request for emergency action on its application.
2. We revoke for reasons of dormancy, under 14 CFR 204.7, the certificate of public convenience and necessity reissued to Viscount Air Services, Inc., by Order 95-4-17, April 11, 1995, authorizing it to engage in interstate charter air transportation of persons, property, and mail.<sup>5</sup>

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<sup>5</sup> By this order we revoke only Viscount’s interstate certificate. Revocation of the certificate authorizing it to engage in foreign charter air transportation is subject to Presidential review in accordance with section 41307 of the Statute and will be handled in a separate order.

3. We will serve a copy of this order on the persons listed in Attachment A.

By:

**CHARLES A. HUNNICUTT**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at:  
<http://dms.dot.gov>*

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